

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated November 12, 2008. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-20 are pending in the Application. Claims 18-20 are added by this amendment and depend from claim 1, currently under examination. By means of the present amendment, the claims are amended including for better conformance to U.S. practice, correcting typographical errors, amending dependent claims to begin with "The" as opposed to "A" as well as correcting certain informalities noted upon review of the claims. By these amendments, the claims are not amended to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents. Applicants furthermore reserve the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

In the Office Action, the Restriction Requirement is deemed proper and is made final.

Traversal of this restriction requirement is respectfully maintained.

Arguments in Support of Traversal of Restriction

It is respectfully submitted that the restriction requirement is in error and is not supportable under PCT Rules 13.1 and 13.2 since each of the claims share a single general inventive concept, namely "said driving means providing during selection of a picture element variable voltages to said picture element prior to applying a fixed voltage to the display device" as recited in claim 1 and as similarly recited in claim 15 which recites "said driving means providing prior to selection of a picture element a voltage to said picture element bringing the picture element into one of the extreme states." It is respectfully submitted that under PCT Rule 13.2, unity of invention between claims 1 and 15 is fulfilled since between claims 1 and 15 there is a "relationship among those inventions involving one or more of the same or corresponding special technical features." Further, it is respectfully submitted that the consideration of unity of invention should be made regardless of the fact that claims 1 and 15 are separate claims (see, PCT Rule 13.3). It is respectfully submitted that each of

these inventions nonetheless involve one or more of the same or corresponding special technical features, namely applying preceding voltages to the display device, so as to fulfill unity of invention requirements. As identified in the present application, (emphasis added) "[t]he invention is based on the insight that the application of these preceding voltages improves the homogeneity of the switching behavior of the oil film, avoiding the local spreading of the oil film and reducing the probability of breaking the oil film." (See, present application, page 2, lines 8-10.)

While the Applicants note the burdens placed on an Examiner during Examination of an application including numerous fields of classification of search, nonetheless, it is respectfully submitted that these fields of search are common to each of the identified species of the figures and corresponding claims. Accordingly, while the burden on the Examiner is admitted considerable, nonetheless, it is respectfully submitted that an examination required for searching the additional identified species presents no additional burden on examination.

Accordingly, it is respectfully requested that the restriction requirement be withdrawn.

In the Final Office Action, claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,359,108. The Examiner indicated that a terminal disclaimer may be used to overcome this rejection. This rejection is respectfully traversed, particularly in view of the present amendments to the claims. However, it is respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

Claims 1 and 2 are rejected under 35 U.S.C. §102(b) over U.S. Patent No. 6,262,833 to Loxley ("Loxley"). Claim 3 is rejected under 35 U.S.C. §103(a) over Loxley in view of U.S. Patent No. 6,262,833 to Zimmermann ("Zimmermann"). These rejections are respectfully traversed. It is respectfully submitted that claims 1-20 are allowable over Loxley alone and in view of Zimmermann for at least the following reasons.

Loxley shows an encapsulated electrophoretic display including at least one display element including at least one capsule. While it is true that the capsule contains at least two substantially immiscible fluids (see, Loxley, abstract), it is respectfully

submitted that neither of the immiscible fluids of Loxley are electro-conductive or polar as recited in each of claims 1 and 15. In fact, the immiscible fluids of Loxley include electrophoretically mobile particles in one of immiscible fluids and a dye in another of the immiscible fluids (see, Loxley, Col. 2, lines 50-57). In fact, in Loxley, it is the particles suspended in one of the immiscible fluids that migrate (see, Loxley, Col. 6, lines 1-2).

While Loxley, Col. 1, lines 66-67 and Col. 2, lines 1-4 is cited in support that Loxley shows (emphasis added) "including a first extreme state and a second extreme state said driving means providing during selection of a picture element variable voltages to said picture element", it is respectfully submitted that reliance on these portions of Loxley for showing these features, or any portions of Loxley for that matter is misplaced.

In these portions, Loxley merely describes providing a steady voltage with a "polarity of that electrode [that] is opposite to the charge on the particles. This state is referred to as the white state. When the electric field is reversed, the pigment particles migrate to the rear electrode, and the viewer sees only the color of the dyed liquid. This state is referred to as the dark state."

While Zimmermann is cited for showing "the variable voltages comprise a set of alternating voltages having a mean value substantially equal to a voltage ( $V_i$ ) associated with an electro-optical state of the picture element to be set (see, Office Action, page 7), it is respectfully submitted that Zimmermann merely shows an application related to a standard electrophoretic display wherein a liquid includes a dye and suspended particles (see, Zimmermann, Col. 2, line 61 though Col. 3, line 4), and as such, has little to do with an electrophoretic display including a first fluid and a second fluid that are immiscible as recited in each of claims 1 and 15.

In any event, Zimmermann like Loxley fails to disclose or suggest that one of the fluids is electro-conductive or polar as substantially recited in each of claims 1 and 15.

It is respectfully submitted that the display device of claim 1 is not anticipated or made obvious by the teachings of Loxley alone and in view of Zimmermann. For example, Loxley alone and in view of Zimmermann does not disclose or suggest, a display device that amongst other patentable elements, comprises (illustrative emphasis added) "at least one first fluid and a second fluid immiscible with each other above a first support plate, the second

fluid being electro-conductive or polar which display device has driving means for applying to electrodes of the optical switch voltages associated with a range of electro-optical states of the picture element between and including a first extreme state and a second extreme state said driving means providing during selection of a picture element variable voltages to said picture element prior to applying a fixed voltage to the display device" as recited in claim 1.

Further, it is respectfully submitted that the display device of claim 15 is not anticipated or made obvious by the teachings of Loxley alone and in view of Zimmermann. For example, Loxley alone and in view of Zimmermann does not disclose or suggest, a display device that amongst other patentable elements, comprises (illustrative emphasis added) "at least one first fluid and a second fluid immiscible with each other within a space on a first transparent support plate, the second fluid being electro-conductive or polar which display device has driving means for applying voltages to the electrodes associated within a range of electro-optical states of the picture element between and including a first extreme state and a second extreme state said driving means providing prior to selection of a picture element a voltage to said

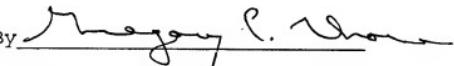
picture element bringing the picture element into one of the extreme states" as recited in claim 15.

Based on the foregoing, the Applicants respectfully submit that independent claims 1 and 15 are patentable over Loxley alone and in view of Zimmermann and notice to this effect is earnestly solicited. Claims 2-14 and 16-20 respectively depend from one of claims 1 and 15 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

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